

The Law Office
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Phone 845 454 0835

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August 11, 2021

Hon. Phillip M. Halpern, USDJ
Federal Courthouse
300 Quarropas Street, Room 530
White Plains, New York 10601

Re: Nelson Murray v. Dutchess County
7:17-cv-09121

Counsel for Plaintiff is directed to file a letter, no longer than two double-spaced pages, explaining precisely why Ms. Blackburn must be deposed in this matter. That letter shall be filed by 5:00 p.m. on August 16, 2021.

Counsel for Defendants shall respond, explaining specifically the reasons for refusing to produce Ms. Blackburn, in a letter no longer than two double-spaced pages filed by 5:00 p.m. on August 18, 2021.

SO ORDERED.



Philip M. Halpern
United States District Judge

Dated: White Plains, New York
August 12, 2021

Dear Judge Halpern,

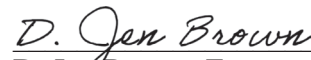
The parties have reached an impasse over the plaintiff's request to depose Caroline Blackburn Esq., a former line attorney for Dutchess County.¹ The defendants decline to produce Ms. Blackburn, but they do not identify a privilege that would entitle them to a protective order.

The parties have conferred (as set forth in the attached correspondence) but are unable to resolve the dispute. Time is of the essence as the deadline for completing fact discovery is **August 31, 2021**. Accordingly, this letter is a joint request for a pre-motion conference.

"The party seeking a protective order bears the burden of establishing that good cause for the order exists." *Duling v. Gristede's Operating Corp.*, 266 F.R.D. 66, 71 (S.D.N.Y. Mar. 30, 2010). "Good cause is established by 'demonstrating a particular need for protection.'" *Id.* (quoting *Cipollone v. Liggett Group, Inc.*, 785 F.2d 1108, 1121 (3d Cir. 1986)). "Ordinarily, good cause exists 'when a party shows that disclosure will result in a clearly defined, specific and serious injury.'" *In re Terrorist Attacks on Sept. 11, 2001*, 454 F. Supp. 2d 220, 222 (S.D.N.Y. 2006) (quoting *Shingara v. Skiles*, 420 F.3d 301, 306 (3d Cir. 2005)).

Email JenBrown@DJenBrownESQ.com

The Law Office of D. Jen Brown, PLLC


D. Jen Brown, Esq.

Attachments

cc: Garrett Kaske, Esq. (by ECF)
Kimberly Hunt-Lee, Esq. (by ECF)
Mr. Nelson Murray

¹ Ms. Blackburn has since been elevated to the position of County Attorney.



Jen Brown <jenbrown@djenbrownesq.com>

Supplemental Document Requests

Jen Brown <jenbrown@djenbrownesq.com>

Fri, Aug 6, 2021 at 11:18 AM

To: Kimberly Hunt Lee <KLee@mccm.com>

Cc: Garrett Kaske <gkaske@kesslermatura.com>, Monica Marshall <mmarshall@djenbrownesq.com>

Dear Kimberly,

Thank you for your kindness and professionalism during the depositions over the last four days. I do have a concern though. Due to your schedule, we have struggled to schedule and complete depositions within the court-ordered deadline. After Tuesday's deposition, you advised that your work and vacation schedule (and Ms. Blackburn's maternity leave) would make it difficult to schedule Ms. Blackburn for a deposition within the deadline (August 30).

Here are my available dates for the rest of the month. August 9, 10, 11, 13, 17, 18, 19, 20, 23, 24, 25, 26, 27. I am NOT available on 8/30 or 8/31 as I have medical appointments that cannot be changed on both days. Otherwise, I have cleared my calendar to accommodate you and Ms. Blackburn.

Please confirm by close of business Monday which of the proposed dates will suit you and your client so that I may make the proper arrangements. As we are close to the Court imposed discovery deadline, if I do not hear back from you with a confirmed date for this deposition, I will request Judge Harlen's assistance. Thank you in anticipation of your willingness to make a good faith effort to get this done.

This is a reminder that at the deposition of M. Dutcavich, plaintiff requested production of the following:

- **progress notes** prepared by witness **Mathew Dutcavich on or about April 26, 2017** regarding the PO-15X project. Mr. Dutcavich stated that these notes are maintained online.

M. Dutcavich testified that on or about April 26, 2017, he received a **date-stamped copy** of plaintiff's EEOC complaint. (Exhibit 17 attached). Please produce:

- M. Dutcavich's **date-stamped** dated on or about April 26, 2017.

Have a great weekend Kim and thanks again.

--

The greatest compliment is a referral.

Best Regards,

-- Jen

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Jen Brown <jenbrown@djenbrownesq.com>

Supplemental Document Requests

Kimberly Hunt Lee <KLee@mccm.com>

Sun, Aug 8, 2021 at 3:17 PM

To: Jen Brown <jenbrown@djenbrownesq.com>

Cc: Garrett Kaske <gkaske@kesslermatura.com>, Monica Marshall <mmarshall@djenbrownesq.com>

Jen,

I haven't been able to get in touch with Caroline. Can you tell me what the basis is for the request for the deposition of the County Attorney? We have produced 7 witnesses for you – without objection, and it is hard to understand what purpose her testimony would serve? I will continue to try to reach her tomorrow, but I have meetings at 10, 11, 12:30 and 2. I also have depositions Tuesday, Wednesday, Thursday and Friday this week. We are short staffed in both attorneys and staff so coverage isn't even an option for me.

Kim

Kimberly Hunt Lee, Esq.**McCabe & Mack LLP**

63 Washington Street

Poughkeepsie, NY 12601

845-486-6894 | Office**845-486-7621 | Fax***Visit us on the web at mccm.com*

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Jen Brown <jenbrown@djenbrownesq.com>

Caroline Blackburn

Jen Brown <jenbrown@djenbrownesq.com>

Mon, Aug 9, 2021 at 6:06 PM

To: Kimberly Hunt Lee <KLee@mccm.com>, Garrett Kaske <gkaske@kesslermatura.com>, Monica Marshall <mmarshall@djenbrownesq.com>

Hello Kimberly,

Have you confirmed a date for Ms. Blackburn's deposition?

--

The greatest compliment is a referral.

Best Regards,

-- Jen

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August 9, 2021

Kimberly Hunt Lee, Esq.
McCabe & Mack LLP
63 Washington Street
Poughkeepsie, NY 12601

Re: Nelson Murray v. Dutchess County et.al.
CV 7:17-cv-09121

Dear Kimberly:

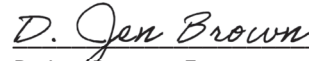
Judge Halpern practices strict adherence to the requirement that parties meet and confer before presenting him with a discovery dispute. We have apparently reached an impasse over whether you will produce Caroline Blackburn for a deposition.

On June 2, 2021, Judge Halpern set a firm deadline of August 31, 2021 for the completion of discovery. He pointedly instructed you to find time in your schedule to comply with the discovery demands of this case. Despite Judge Halpern's admonitions, you could not find any flexibility in your schedule for two months. As a result, depositions were delayed until the first week of August.

Last week, we identified Caroline Blackburn as an essential witness. On August 4, 2021, we gave you notice of our intent to depose Ms. Blackburn. Your response was (1) that you cannot reach Ms. Blackburn who you report is "on maternity leave," (2) you have no availability this month and (3) you will be on vacation the last week of August.

Considering Judge Halpern's firm deadline, I believe the parties have reached an impasse. I write this letter consistent with my obligation to confer in good faith. You were asked to provide a date certain for Ms. Blackburn's deposition by close of business today. You did not do so. Accordingly, I believe it will be necessary to request Judge Halpern's assistance with scheduling this deposition.

The Law Office of D. Jen Brown, PLLC


D. Jen Brown, Esq.

cc: Garrett Kaske, Esq.
Monica Marshall



Jen Brown <jenbrown@djenbrownesq.com>

Meet and Confer

Kimberly Hunt Lee <KLee@mccm.com>

Wed, Aug 11, 2021 at 5:41 PM

To: Jen Brown <jenbrown@djenbrownesq.com>

Cc: Garrett Kaske <gkaske@kesslermatura.com>, Monica Marshall <mmarshall@djenbrownesq.com>, Donna Feller <DFeller@mccm.com>

Jen,

In response to this, we agree that the assistance of Judge Halpern is necessary if you are seeking the deposition of Ms. Blackburn. You indicated the reason for her deposition was that 2 witnesses testified that she was involved in the union grievance. That is not my recollection of the testimony. Mr. Balkind testified that he had spoken with Ms. Blackburn regarding the disciplinary hearing and the resulting charges. I have also confirmed with him with that he did not speak with her about the union grievance. Also, Mr. Balkind did not terminate Mr. Murray, that was done by Mr. Cooper. Mr. Dutcavich similarly did not testify that he had any recollection of speaking with her regarding the union grievance. I do not believe that any "advice" she gave has even been implicated here.

I have also spoken with Ms. Blackburn about this and she was not involved with anything related to the grievance. She remains on maternity leave, and at this point is unable to leave the baby to conduct a deposition for medical reasons.

Kim

Kimberly Hunt Lee, Esq.**McCabe & Mack LLP**

63 Washington Street

Poughkeepsie, NY 12601

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